

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2185 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHAICHANDBHAI CHHAGANBHAI PRAJAPATI

Versus

DY COLLECTOR, (LAND REFORMS) LAND REVERNUE DEPTT (APPEALS)

Appearance:

1. Special Civil Application No. 2185 of 2001
MR P.R. Dave for Petitioner No. 1
Mr. H.C. Patel, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/12/2002

ORAL JUDGEMENT

Heard learned advocate Mr. P.R. Dave for the
petitioner and Mr. H.C. Patel, learned A.G.P. for the

respondents. This petition was admitted by this Court by issuing rule thereon and interim relief was granted. By way of this petition, the petitioner has challenged the order dated 27th August, 1993 passed by the Deputy Collector, Gandhinagar under section 65 of the Bombay Tenancy Act which is at Annexure-A to this petition. It was submitted by the learned advocate Mr. Dave on behalf of the petitioners that after the order passed by the Deputy Collector (Land Reforms) Gandhinagar, the petitioner approached various authorities and ultimately it was advised to the petitioner to challenge the said order before this court as the powers were exercised by the Deputy Collector, Land Reforms, Gandhinagar of the State Government and, therefore, there was some delay in challenging the impugned order before this Court. He also submitted that the powers were exercised by the Deputy Collector, (Land Reforms), Gandhinagar under section 65 for assuming the land in question and the scope of inquiry under section 65 is elaborate which includes reasonable opportunity to the petitioner. He also submitted that the petitioner deposed before the Deputy Collector and two affidavits were filed in support of the petitioner before the Deputy Collector and thereafter, the talati cum mantri who has drawn panchanama in respect of the land in question has produced the same before the Deputy Collector and, thereafter, merits of the matter were examined by the said authority and only relying upon the village form no. 7-12 wherein there was no entry of cultivation in the disputed land, on that basis, the Deputy Collector came to the conclusion that the land in question remained without cultivation for more than ten years and that is how the orders under section 65 of the Act were passed by the authority. According to him, there was no sufficient evidence on record contrary to the affidavit of the petitioner as well as his two witnesses. He also submitted that the panchanama produced by the talati cum mantri was required to be proved by examining the talati and by giving reasonable opportunity to the petitioner for cross examination of the talati cum mantri but without examining the talati cum mantri and without affording any opportunity to the petitioner or cross examination of the talati cum mantri, the deputy collector considered the said material as conclusive proof against the petitioners and therefore, there was violation of the principles of natural justice. In support of his submissions, he has relied upon the decision in case of Sanjaybhai Indubhai Bhatt versus State of Gujarat, reported in 2000 (3) GLH 768 and submitted that the scope of section 65 as well as inquiry contemplated under said section was examined by this

court in the said case and it was held by this Court that whatever the report of the talati cum mantri and the Mamlatdar as well as the panchanama is required to be proved before the authority by leading proper evidence and proper opportunity is also required to be given to the person for cross examining such officer who has submitted such report or panchanama and if such material and otherwise, it amounts to the violation of the principles of natural justice. It was also submitted by him that in this case, the panchanama produced by the Talati cum Mantri was considered by the Deputy Collector (LR) Gandhinagar as a conclusive piece of evidence without affording an opportunity of cross examination to the petitioners and, therefore, in view of the principles laid down by this Court in case of Sanjaybhai (supra), the impugned order is required to be quashed and set aside.

On the other hand, learned Asstt. G.P. Mr. H.C. Patel has submitted that the authority was right in acting under section 65 of the Tenancy Act and before initiating the proceedings under section 65 of the Act, show cause notice was given to the petitioner. He also submitted that the authority has rightly examined the papers and merits of the matter and has rightly relied upon the village form no. 7 and 12 which reflects the cultivation of the land in question, relating to cultivation of the land in question and, therefore, no error was committed by the authority in passing the order in question and, therefore, his conclusions are based upon the relevant record and no error has been committed by the authority which would require interference of this court in exercise of the powers under Article 226/227 of the Constitution of India and, therefore, this petition is required to be dismissed.

I have considered the submissions made by the learned advocates for the parties. Looking to the record and the impugned order, it is clear that before the authority, two witnesses were examined in support of the case of the petitioner and, thereafter, the talati cum mantri concerned produced the panchanama dated 24th August, 1993 wherein it has been mentioned as to what extent the land in question has been cultivated. There was no construction upon the land in question. From the record, it is clear that the Deputy Collector (LR) Gandhinagar has relied upon only village form no. 7 and 12 for coming to the conclusion that the land in question has remained uncultivated for more than ten years and, therefore, on the basis of village form no. 7 and 12,

the Deputy Collector passed the impugned order on 27th August, 1993 and the Government, thus, assumed the land in question. According to my opinion, when there was sufficient evidence produced by the petitioner alongwith two witnesses in support of his evidence, the Deputy Collector ought to have taken the same into consideration while passing the impugned order. However, same has not been taken into consideration by the Deputy Collector while passing the impugned order. It is clear that only on the basis of the village form produced by the talati cum mantri, the Deputy Collector formed his opinion that the land in question was not cultivated for more than ten years. I am of the view that before considering the village form no. 7 and 12 and also before forming such conclusion, the Deputy Collector ought to have appreciated the evidence produced by the petitioner and he ought to have considered that the village form no. 7 and 12 produced by the talati cum mantri cannot be taken into consideration unless and until the same is proved by the talati by examining himself and the petitioner is given an opportunity of cross examination of the talati cum mantri in that regard. According to my opinion, the conclusions drawn by the Deputy Collector are contrary to the affidavit of two witnesses and the deposition of the petitioner before the authority. Many a times, it happens that necessary entries may not be made by the talati cum mantri after personal verification of the land in question. Therefore, the evidence produced by the talati cum mantri in the form of village form no. 7 and 12 cannot be considered as conclusive proof of evidence unless and until the person concerned namely talati cum mantri is examined in that regard before the authority and the petitioner is given proper opportunity to make cross examination of the talati cum mantri in that regard. I am of the view that in absence of that, village form no. 7 and 12 cannot be considered as legal conclusive piece of evidence against the petitioner because if the concerned talati cum mantri is examined before the authority, then, naturally the petitioner will get an opportunity of cross examination of such person or officer but that exercise has not been carried out by the respondent before passing the impugned order. Therefore, according to my opinion, the order dated 27th August, 1993 is contrary to the principles of natural justice and, therefore, same is liable to be quashed and set aside.

In the result, this petition is allowed.
Order dated 27th August, 1993 is quashed and set aside.
Rule is made absolute accordingly. There shall be no order as to costs.

5.12.2002 (H.K. Rathod, J.)

Vyas